STATE OF WISCONSIN
Department of Industry, Labor and Human Relations

In the Matter of the Petroleum
Environmental Cleanup Fund Act (PECFA)
Application of:

Blaisdell Lake Lodge
Job #926800

This is an appeal of a decision of the DILHR Division of Safety and Buildings which denied part of a claim for reimbursement under §101.143, Stats., the Petroleum Environmental Cleanup Fund Act (PECFA).

Among other items that are not at issue, the Division denied reimbursement claims under §101.143, Stats., for: $270.00 for "building demolition (Dan Johnson Invoice) and all costs associated with the removal of building;" $1,377.88 in "rush charges for analytical tests;" and $284.81 for insurance costs not due to a specific policy.

In lieu of a hearing, the parties have agreed that a decision may be issued on the basis of the department's record as supplemented by the petitioner. I conclude that the reimbursement denials were correct.

FINDINGS OF FACT

1. If it finds that all applicable requirements have been met, DILHR is required to issue an award to reimburse a claimant for the eligible costs incurred in responding to and remediating the contamination from a petroleum products discharge from a petroleum product storage system. §101.143(4), Stats.

2. The invoices for the costs relating to the building describe the work as follows: "Remove all things from garage and take garage down; haul all debris and rake garage area" (John E. Burt invoice of May 7, 1990); "load and haul concrete and dirt away" (Dan Johnson invoice of September 14, 1990); "Johnson cleaned all the dirt and concrete up at Blaisdell Lake Lodge. He

hauled 3 large loaded & dumped it in my own landfill" (John E. Burt reimbursement invoice of September 20, 1990).

3. The "rush charges" for laboratory tests were not listed under the "emergency action" portion of the PECFA claim forms. There is no evidence in the record that test results were needed on a rush basis to respond to an emergency situation.

4. The fee schedule issued by the Bay West consulting firm effective July 1, 1991, identified the following insurance charge: "A 3% fee will be included on all invoices to cover the following insurance costs: General Liability, Contractors Pollution Liability, Errors and Omissions Liability."

CONCLUSIONS OF LAW

1. The invoices relating to the cleanup and removal of the building debris do not establish that any portion of the costs were integral to the remediation under §101.143(4), Stats.

2. The processing of laboratory tests on a "rush" basis was not necessary and thus not integral to the remediation under §101.143(4), Stats.

3. The flat rate surcharge for the contractor's insurance costs was not directly related to the remediation and therefore not reimbursable under §101.143(4), Stats.

OPINION

The petitioner has clearly proceeded in a sincere and conscientious manner to comply with all of the cleanup requirements of the law. In response to the portions of the reimbursement application that have been denied, the petitioner points out that the removal of the garage permitted the removal of contaminated soil under the building, that the "rush" test results enabled the remediation to proceed at a faster pace, and that the insurance surcharge could have simply been hidden in the consultant's general fees.

Unfortunately, these arguments cannot be accepted as the basis for allowing the reimbursements that have been denied. The PECFA statute is intended to assist property owners who must clean up certain types of petroleum contamination, but the statute also clearly is intended to place limits on the reimbursements to conserve the amount of public funding that is used.

While some of the expense of clearing the garage debris may have been necessary to reach some of the contaminated soil, it is impossible to tell from the invoices just what that proportion was, and it is clear that the petitioner received other compensation and benefits from the removal of the garage. In the absence of a clear showing of the petitioner's actual expense, there is an insufficient basis to grant a reimbursement.

The same type of analysis applies to the laboratory "rush" charges. The petitioner asserts that, at a certain point in the cleanup process, faster results avoided the risk of seasonal soil freezing causing a delay in testing. However, there is no documentation that this was actually a true emergency situation.

The "hiding" of the insurance surcharge in general overhead would not necessarily make it reimbursable, because that would increase the contractor's overall markup. In any event, the imposition of a flat charge of this type means it may not reflect the true cost of the item.

ORDER

For these reasons, the previous decision of the Division of Safety and Buildings in this matter is affirmed.

Dated this 27th day of July, 1993.

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